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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financial and any other implications resulting from the introduction of a staff retention bonus at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia

Report of the Secretary-General

Summary

The Secretary-General, in his report of 17 October 2005 on staff retention and legacy issues (A/60/436), put forward proposals on ways to ameliorate the staffing situation at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. In his report, the Secretary-General outlined initial measures already implemented by the Tribunals, which could be adopted within the existing regulations and rules and as such did not require legislative mandate. The report also contained a proposal for the establishment of a retention bonus for staff members who are required to remain with the Tribunals until their posts are no longer required.

In its report on the financing of the Tribunals (A/60/591), the Advisory Committee on Administrative and Budgetary Questions noted that the idea had merit and should be pursued. However, the Advisory Committee requested that an analysis

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of the financial and any other implications resulting from the introduction of such a measure should be presented to the General Assembly before it is requested to pronounce itself on this matter. In its resolutions 60/241 and 60/243, the General Assembly endorsed the conclusions and recommendations of the Advisory Committee.

The present report is submitted in response to General Assembly resolutions 60/241 and 60/243. It contains a detailed analysis of the financial and other implications resulting from the introduction of a retention bonus at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

I. Introduction

1. In its resolutions 59/273 and 59/274 of 23 December 2004, the General Assembly requested the Secretary-General, in consultation with the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia to submit proposals on ways to ameliorate the staffing situation at the Tribunals in the context of the proposed budget for the biennium 2006-2007. In addition, the Assembly requested the Secretary-General to make every effort to reduce the vacancy rate and improve staff retention at the Tribunals, including by extending the contracts of staff performing functions that are central to the implementation of the completion strategy beyond the period of the current budget.

2. Pursuant to that request, in section I of his report of 17 October 2005 on staff retention and legacy issues (A/60/436), the Secretary-General identified measures aimed at improving staff retention at the Tribunals. In paragraphs 8 to 11 of his report, the Secretary-General addressed initial measures already implemented by the Tribunals, which could be adopted within the existing regulations and rules and as such did not require legislative mandate. It will be recalled that those arrangements include: (a) extension of the length of employment contracts to a period of two years to all staff at the Tribunals; (b) establishment of an internal G-to-P examination; (c) reduction of the required post incumbency from two years to one year before staff can apply for posts at a higher level in the Tribunals; (d) recruitment of qualified spouses; and (e) expansion of training options. In addition to outlining the measures already implemented, the Secretary-General put forward a proposal for the establishment of a retention bonus for staff members who are required to remain with the Tribunals until their posts are no longer needed.

3. In its report on the financing of the Tribunals (A/60/591), the Advisory Committee on Administrative and Budgetary Questions encouraged the Tribunals to implement those measures outlined in the report of the Secretary-General which could be adopted within the existing rules and regulations and did not require legislative authorization. As regards the retention bonus, the Advisory Committee noted that the idea had merit and should be pursued. However, the Committee requested that an analysis of the financial and any other implications resulting from the introduction of such a measure be provided to the General Assembly before it is requested to pronounce itself on the matter. The General Assembly, in its resolutions 60/241 and 60/243, endorsed the conclusions and recommendations contained in the report of the Advisory Committee.

4. The present report is submitted pursuant to the request of the Advisory Committee. It contains a detailed analysis of the financial and other implications resulting from the introduction of a retention bonus at the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

II. Importance of retaining highly skilled and specialized staff

5. In the past two years, staff have been leaving the Tribunals well in advance of the completion of their appointments for positions in other organizations of the United Nations common system, peacekeeping missions, the International Criminal Court and ad hoc entities. The current high rate of rotation is clearly disrupting the normal operations of the Tribunals. Departures of key personnel in many areas of

the Tribunals (such as investigations, appeals, prosecution and Chambers) continue to have a negative impact on the pace of trial activity and, by extension, on the dates of the completion strategies. As the Tribunals are moving closer to the completion of their mandates, it is expected that the number of departures will increase further. That will slow down the speed with which trials are completed. In addition, the costs associated with the recruitment and training of new staff could be considerable, which in turn could put the Tribunals in a vulnerable position and affect their ability to meet time and quality demands for completing their mandate.

6. As indicated in the report of the Secretary-General, the Tribunals are required to function at maximum speed and efficiency in order to complete all proceedings by the dates specified in their completion strategies. A critical aspect of reaching those targets is maintaining highly skilled and specialized staff, even in the face of the need for an orderly downsizing of the workforce. The Tribunals run large and complex trials that generate tens of thousands of pages of documentation. Many of the staff attached to the trials have acquired in-depth knowledge of the cases over an extended period of time. Such knowledge cannot easily be replaced, and the learning curve required to enable new staff to cope adequately with ongoing cases is both time-consuming and expensive.

7. The specialized knowledge of the regions and the respective conflicts, the knowledge of international law (much of which has been developed within the Tribunals) and the operation of an international criminal tribunal are all unique to the Tribunals and their staff. In all categories and occupational groups, the staff at the Tribunals possess skills and institutional knowledge that make them essential to the daily functioning of those institutions. With each departure of staff, institutional knowledge and specific expertise is lost and must be learned by a new recruit, at all levels and in all functions. The time needed to bring new staff up to speed has an immediate impact on the effectiveness and timeliness of court activity and related actions (for example, appeals and judgements). It is also important to note that such skills and knowledge are not limited to staff in the legal occupations. Other important areas include language services, court management services, security, assistance to witnesses and information technology support. In addition, it would be essential to retain key staff in the areas of personnel, finance and general services during the final stages of the Tribunals. The above-mentioned legal and administrative functions are not limited to staff in the Professional category. Many General Service functions are also critical to the smooth running of trials (for example, trial managers, court reporters, witness assistants and video directors) and the general backstopping of the operations of the Tribunals.

8. The retention and continuity of specialized staff in both the Professional and General Service categories is therefore essential for the Tribunals to maintain the fast pace of trial activity required to meet the targets of the completion strategies.

9. While a number of internal arrangements aimed at improving job security, alleviating staff concerns and providing opportunities for staff development have been put in place and have had and continue to have a positive impact on staff morale, they are not sufficient by themselves to motivate staff to remain with the Organization until their posts are abolished or until the Tribunal's mandate is completed. For those reasons, in his report, the Secretary-General proposed the introduction of a retention bonus. The methodology suggested for the payment of such a bonus is derived by reference to the principle contained in annex III to the

Staff Regulations, which provides for average payments equivalent to one month of salary per year of service. The proposed payment would also be consistent with the practice followed by other public and private sector companies in applying retention policy models. The proposed bonus would apply only to the Tribunals, whose unique status is anchored in the fact that: (a) their mandate is temporary in nature; (b) a large proportion of their staff perform specialized functions not normally found in the United Nations system; and (c) they will both close down in accordance with the completion strategies.

10. Under the envisaged scheme, it is proposed that the retention bonus would only apply to staff who are required to remain with the Tribunals until their posts are no longer needed. The bonus, which would cover service only with the Tribunals, would not be payable in the following situations:

(a) Separation from service or resignation prior to the cessation of or need for services;

(b) Fixed-term appointment terminated or not renewed on disciplinary grounds or owing to reasons specified in staff regulation 9.1 (a) or for such other reason as may be specified in the letter of appointment;

(c) Less than two years of service were completed at the time the bonus is due.

III. Analysis of the financial and other implications arising from the implementation of a retention bonus

11. In order to determine the financial implications of the proposed retention bonus, the Tribunals carried out an analysis of the costs applicable under the status quo as compared with the costs associated with the payment of a retention bonus. The cost components included in the analysis are: (a) the loss of productivity (delays in the proceedings); (b) the direct costs of appointment and separation of staff (rotation costs); and (c) the actual payment of the retention bonus.

A. Loss of productivity

12. As mentioned in the preceding paragraphs, over the past years staff have been leaving the Tribunals well in advance of the completion of their contracts for positions in other United Nations and intergovernmental organizations. If that trend continues, a situation may arise in which the Tribunals will have to delay cases owing to the non-availability of experienced staff to support the proceedings. For instance, the Office of the Prosecutor in both Tribunals deals with a number of very complex trials involving many years of pre-trial activity and extensive research encompassing enormous amounts of information and evidence collected under the leadership of a senior trial attorney. The senior trial attorney is the leader of the prosecution team and conducts most of the prosecution work in court (presenting the case, interviewing and cross-examining witnesses, submitting motions and raising legal and factual issues). The departure of senior trial attorneys would impact negatively on the normal development of the case, particularly if it takes place during the actual conduct of a trial. The Office of the Prosecutor has a limited number of attorneys who, in addition to their trial workload, are also very much

involved in pre-trial preparations. Given current staffing complements, the Office the Prosecutor is not in a position to cover vacancies through the internal redeployment of posts. Therefore, when a trial attorney leaves, the office is compelled to recruit an external candidate. Precious time is wasted with each new recruitment. As the dates of completion draw near, recruitment timelines are expected to widen. Once recruited, new staff need several months to become acquainted with the Tribunals' legal systems and procedures in order to be in a position to provide the leadership required for the successful conduct of trials and appeals. During this learning period, which can range from 6 to 12 months, the productivity, and hence the efficiency, of the Office of the Prosecutor is greatly affected. Likewise, the departure of investigators would also slow down the pace of trials. Both Tribunals have investigators who have been working for years on one or two cases and have developed critical institutional memory. The loss of such expertise would not only affect the completion time of trials, but would also deny effective and efficient trial support, which in turn could affect the outcome of the case.

13. Likewise, the Chambers have a relatively small number of legal officers who provide dedicated support to the judges during the conduct of all proceedings. It is not unusual for Chambers staff to leave the Tribunal to pursue more stable career opportunities, particularly in the light of the limited scope for promotion. Several such jobs are currently under recruitment and more will undoubtedly become vacant as the Tribunals approach the completion of their mandates. Given the specialized qualifications and experience required of Chambers staff, it would normally take several months before new recruits could be considered to be fully operational. Without adequate support from legal officers, the time required for the judges of the Tribunal to hear and decide cases and dispose of appeals efficiently will increase dramatically. Should the rate of departures increase in the future, a situation may arise in which the Chambers will simply have no option but to delay a trial owing to the non-availability of qualified legal support staff.

14. Conference interpretation is another key function particularly affected by staff turnover. Certain cases require that interpreters be able to work in three languages. The interpretation units at both Tribunals have a very limited number of interpreters who can work in the three working languages of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (namely, French and English at both Tribunals, and Bosnian/Serbian/Croatian at the International Tribunal for the Former Yugoslavia and Kinyarwanda at the International Criminal Tribunal for Rwanda). Because of a limited and highly competitive market, any staff departure would have serious consequences on the quality and timeliness of the interpretation services provided to trials. There are a very limited number of interpreters with all three languages. The unavailability of qualified interpreters could potentially force the Tribunals to halt a trial, or alternatively to resort to relay interpretation, which would affect the quality of the services provided and increase the likelihood of mistakes being made in interpretation. Whenever mistakes do occur, precious time is spent on correcting/clarifying them, which in turn slows down the proceedings.

15. As mentioned above, a similar situation may arise in connection with the departure of staff performing other functions that are also critical to the conduct of trials and appeals in both the Professional and General Service categories (e.g., managers, court reporters, witness assistants and video directors, among others).

16. The Tribunals realize that the departure of a few employees crucial to the completion of a case should not necessarily result in long-term disruptions to the proceedings. This situation has occurred in the past and has been addressed through the temporary redistribution of functions, use of overtime and other temporary measures. However, should the departure of several key staff occur simultaneously, the Tribunals will inevitably confront serious disruptions and delays in trial proceedings, which could potentially lead to the temporary halting of trials.

17. Owing to the specialized knowledge of many occupations at the Tribunals, recruitment lead times can be considerable (from six months upwards). Furthermore, the time required to bring new recruits up to speed can also be significant (from 6 to 12 months is required for staff in legal and investigative positions to familiarize themselves with the region and conflicts). On this basis, it is estimated that the delays in proceedings that could be brought about by an ever-increasing rate of staff rotation could range from 6 to 12 months. For the purpose of this exercise, a six-month delay in the scheduled completion of one trial has been used in the calculations. This would translate into additional costs of approximately $30 million for each Tribunal.

B. Rotation costs

18. A review conducted by the Tribunals revealed that the costs of appointment and separation (including travel, installation, repatriation and shipment of personal effects) are significant. It is estimated that the average rotation costs for one post would amount to approximately $75,000, which is equivalent to 10 months of the annual remuneration of a staff member at the P-3, step V, level. Should no action be taken to improve staff retention, the number of separations (and hence staff turnover) is expected to rise exponentially. A projected average annual turnover rate of 20 per cent has been assumed for the period from January 2007 to December 2010. Based on that projection, the total rotation costs have been estimated at $43.2 million and $27.6 million in the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, respectively.

19. The implementation of the proposed retention bonus will not result in zero turnover, as some staff will continue to leave the Tribunals for better and more stable career opportunities elsewhere, irrespective of the approval of the retention bonus scheme. It is, however, expected that the retention bonus option would bring about a reduction of 50 per cent in staff turnover rates. Therefore, the total rotation costs under the retention bonus option have been estimated at $21.6 million and $13.8 million for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, respectively. The difference in rotation costs between the Tribunals is due mainly to the higher number of international staff (Professional, Field Service and international General Service staff) working in the International Criminal Tribunal for Rwanda as compared to the International Tribunal for the Former Yugoslavia.

C. Retention bonus

20. The bonus has been calculated on the basis of a payment equivalent to one month's salary per year of service. Assuming a five-year average seniority of

Tribunal staff, this would translate into an average payment equivalent to five months' net salary for all active staff. This, however, is the worst-case scenario, as not all staff would qualify for the payment of the bonus owing to their seniority, separation from service and other factors listed in paragraph 10 above. For those reasons, it is assumed that on average 40 per cent of Professional staff and 50 per cent of General Service staff would qualify for the payment of the bonus at the International Tribunal for the Former Yugoslavia. For the International Criminal Tribunal for Rwanda, the assumptions are the same except for General Service staff, for whom a 70 per cent qualifying factor has been used owing to the more difficult conditions in the labour market in the Tribunal's duty stations. Based on the above assumptions, the total payments are estimated at $11.2 million and $12.1 million for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, respectively.

21. Tables 1 and 2 below illustrate a cost-benefit analysis of the components under the two options being considered, namely the no bonus and the retention bonus options.

Table 1

Cost-benefit analysis for the International Criminal Tribunal for Rwanda under the two options

(Millions of United States dollars)

Cost component	*No bonus*	*Retention bonus*
Loss of productivity	30.0	—
Rotation costs	43.2	21.6
Retention bonus	—	11.2
Total	**73.2**	**32.8**

Table 2

Cost-benefit analysis for the International Tribunal for the Former Yugoslavia under the two options

(Millions of United States dollars)

Cost component	*No bonus*	*Retention bonus*
Loss of productivity	30.0	—
Rotation costs	27.6	13.8
Retention bonus	—	12.1
Total	**57.6**	**25.9**

22. The above cost-benefit analysis does not include indirect costs associated with high rates of staff turnover, such as the additional costs incurred in the training of new staff, increased overtime usage, low levels of staff morale and the effects on the quality of work and high standards required and expected from the two international Tribunals. Those factors, while difficult to quantify, also have a bearing on the normal operations of the Tribunals, in both quantitative and qualitative terms.

IV. Conclusions and recommendations

23. In summary, the results of the analysis conducted by the Tribunals reveal that the financial implications of the retention bonus far offset the additional costs associated with higher rates of staff turnover. Should existing staff continue to depart at current rates, considerable expenditure would be incurred in respect of rotation costs. At the same time, the loss of institutional knowledge resulting from high levels of staff turnover would have a direct impact on productivity and efficiency and, by extension, on the pace of trial activity. Substantial savings can be achieved if the Tribunals are able to retain their staff through the final stages of their mandates. Both the reduced rotation costs and the implications on the completion strategies of the proposed retention bonus are significant and, in the view of the Tribunals, make a compelling case for implementing the new scheme at both Tribunals.

24. With regard to the financing related to the establishment of a retention bonus (total estimated payments of $11.2 million and $12.1 million for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia), it should be noted that disbursements in respect of the retention bonus would be effected towards the end of the completion strategies, mainly in 2009 and 2010. In that respect, the related requirements would be reflected in the context of the proposed budgets for the years from 2008 to 2010 and taking into consideration the number of posts that would be proposed for abolishment in those years. Accordingly, the establishment of the retention bonus would not entail any financial implications for the biennium 2006-2007.

25. **Based on the foregoing, the General Assembly is requested to approve the establishment of a retention bonus for staff of the Tribunals, with effect from 1 January 2007.**